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VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W. — Portals
Washington, D.C. 20554

Re: *Ex parte*, CC Docket No. 01-194, In the Matter of Application by
SBC Communications, Inc., *et al.*, for Provision of In-Region
InterLATA Services in Arkansas and Missouri

Dear Ms. Salas:

This letter responds to a number of arguments made by SWBT for the first time in its reply comments regarding its compliance with its obligations with respect to advanced services. Specifically, the letter responds to SWBT's arguments that it has complied with its obligations: (1) to furnish line sharing on both standard copper and fiber-fed DSL configured loops; and (2) to make advanced service offerings available for resale in compliance with Section 251(c)(4).

**I. SWBT'S REFUSAL TO PROVIDE END-TO-END LINE SHARING OVER
HYBRID FIBER-COPPER LOOPS VIOLATES CHECKLIST ITEMS
TWO AND FOUR.**

While much of SWBT's reply comments are simply a rehash of its initial arguments concerning its refusal to provide line sharing over fiber, the reply contains a number of misstatements and mischaracterizations that require a response. First, SWBT claims that end-to-end line sharing over hybrid fiber-copper loops is "a technical and logical impossibility". SWBT Reply Comments at 55-56. SWBT is wrong. As orders by the Texas and Illinois Commissions make clear, end-to-end line sharing is technically feasible.¹ In fact, its own witness in the Texas line sharing proceeding has contradicted

¹ *Petition of Rhythms Links, Inc. Against SWBT for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related*

SWBT's claim that an end-to-end line sharing UNE is a technical and logical impossibility.²

Second, SWBT claims that the Commission's *Waiver Order*³ addresses, and purportedly resolves, SWBT's current unbundling obligations with respect to Project Pronto hybrid fiber-copper loops. This claim is also incorrect. The *Waiver Order* is narrowly confined to specific issues regarding the ownership of ADLU cards and OCDs under the SBC/Ameritech Merger Conditions. *Waiver Order*, ¶ 2. The *Waiver Order* expressly states that it does not "relieve SBC of any obligations under sections 251, 252, or any other provision of the Communications Act of 1934, as amended (the Act) and our implementing rules." *Id.* As the Commission made clear, it did not "intend the analysis or conclusions in th[e] [*Waiver*] *Order* to constrain or otherwise affect [its] interpretation of those rules." *Id.*

Third, SWBT asserts that the Commission need not consider the "proper application of [line sharing] unbundling rules to NGDLC equipment like that used in Project Pronto" because "no question of present compliance stands before the Commission." SWBT Reply at 58. This assertion is untrue. In a recent Missouri proceeding, AT&T has requested, albeit unsuccessfully, that SWBT provide line sharing from the customer premises to the central office, regardless of whether the loop is configured over copper or fiber-fed DLC equipped loops.⁴ In addition, SWBT's statement that there can be "no question of present compliance before the Commission" because no Arkansas and Missouri CLEC has requested end-to-end line sharing over fiber-fed loops is patently absurd. For over a year, CLECs have known that no such

Arrangements for Line Sharing, Texas PUC Docket No. 22469, Revised Arbitration Award at 67-68 (September, 2001) (Revised Texas Arbitration Award); *Illinois Bell, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service*, Ill PUC Docket No. 00-393, Order on Rehearing at 38 (Aug. 10, 2001) (Illinois Rehearing Order) (noting that the end-to-end line sharing UNE "moots" all technical issues).

² See Revised Texas Arbitration Award at 67-68 (noting that SWBT's witness admitted that "it is technically feasible to 'fiber share' voice and xDSL traffic" over Project Pronto). See also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Comments of Alcatel USA, Inc. at 9-12 (filed Sept. 24, 2001) (recommending that the Commission adopt an end-to-end DSL "derived facility" UNE, noting that "it is apparent that a broadband service option extending the service to the customer premises [, such as SBC's broadband service offering,] could meet the Commission's general definition of an unbundled loop"); Alcatel Reply at 4 (filed Oct. 9, 2001) (continuing to stress that an end-to-end line sharing UNE over hybrid fiber-copper loops is a "technically feasible alternative" that is, from a technical and operational standpoint, no different from SBC's broadband service offering).

³ *Application of Ameritech Corp. and SBC Communications for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Second Memorandum and Order (rel. August 9, 2000) ("*Waiver Order*").

⁴ *In the Matter of the Determination of Prices, Terms, and Conditions of Line-Splitting and Line-Sharing*, MOPSC Case No. TO-2001-440, Direct Testimony of Scott Finney, pp. 25 *et seq.* (May 1, 2001); Hearing Tr., at 522-23 ("MOPSC Hearing Tr.").

request would ever be granted because SWBT's parent, SBC, has consistently maintained in the regulatory arena that it would not provide end-to-end line sharing over its Project Pronto architecture.⁵

As AT&T has explained, the *Line Sharing Reconsideration Order* and the *UNE Remand Order* currently obligate SWBT to provide end-to-end line sharing over Project Pronto hybrid fiber-copper loops. AT&T Comments at 69-76; Finney Decl. ¶¶ 38-75. Thus, just as SWBT must provide end-to-end line sharing over hybrid fiber-copper loops in Texas and Illinois, so too must SWBT provide the same line sharing option over Project Pronto loops in Missouri and Arkansas. Until it does so, the Commission should find that SWBT does not comply with checklist items two and four.

II. SWBT HAS NOT DEMONSTRATED THAT ITS ADVANCED SERVICES OFFERINGS ARE AVAILABLE FOR RESALE IN COMPLIANCE WITH SECTION 251(C)(4)

AT&T has explained that SWBT has not demonstrated that its advanced services offerings are available for resale in compliance with Section 251(c)(4) and, therefore, has not complied with checklist item 14. See AT&T Comments 60-69; AT&T Reply 18-26. On reply, SWBT claims that it "has made available for resale under Section 251(c)(4) every telecommunications service that it currently offers 'at retail to subscribers who are not telecommunications carriers.'" SWBT Reply at 23-34. AT&T has already addressed most of SWBT's claims.⁶ Accordingly, AT&T will not reiterate those arguments here.

However, it bears noting that SWBT's reply comments make clear that it is attempting to use its ASI "DSL Transport" tariff to shield itself from the requirements of Section 251(c)(4) while at the same time exploiting its own ability to jointly market local voice and DSL service. In doing so, SWBT seeks to frustrate the pro-competitive intent set forth in the *Second Advanced Services Order*, the very decision on which SWBT seeks to rely. That decision, which exempted Bell Atlantic's bulk ISP tariff from the wholesale discount provisions of Section 251(c)(4) was necessarily predicated upon the

⁵ SBC's operating ILECs have refused to provide end-to-end line sharing over fiber-fed loops, even after state commissions have required SBC to provide such unbundling. For example, the Illinois Commission has issued at least three orders requiring some form of Project Pronto unbundling. Each time, SWBT failed to comply with the decision, instead launching further legal challenges.

⁶ For example, AT&T and other competitive carriers have already demonstrated that the ASI tariff imposes several conditions and limitations on the resale of DSL that are unreasonable and discriminatory, in violation of both Section 251(c)(4) and Section 251(b)(1). See AT&T Reply at 19-20 (e.g., restricting the DSL service to line sharing arrangements with SWBT voice service; granting SWBT-ASI the right to place other high-capacity applications on the same line used to provide the DSL service); WorldCom Reply at 8-10 (same). Moreover, SWBT does little, if anything, to rebut these arguments. Rather than address, or correct, these unreasonable conditions and limitations, SWBT argues that these provisions implicate Section 251(b)(1), not Section 251(c)(4), violations. However, Section 251(c)(4) expressly prohibits ILECs from imposing unreasonable and discriminatory conditions on resold services. The tariff restrictions identified by the CLECs thus squarely violate Section 251(c)(4). In any event, contrary to SWBT's claims, the Commission may consider Section 251(b)(1) violations as part of its public interest review and analysis.

existence of a separate tariff, or tariffs, for business and residential end-users. *See id.*, ¶ 20. As the Commission explained, it sought to “reinforce the resale requirement of the Act by ensuring that resellers are able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates, thus ensuring that competitive carriers are able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs.” *Id.*, ¶ 20.

In fact, the SWBT-ASI offering contains rates, terms, and conditions that look remarkably like a retail offering. For example, a customer has the option of purchasing a single line of SWBT-ASI’s DSL service for \$39 per month, on a month-to-month basis.⁷ This offer is not subject to any volume or term requirements. Had SWBT-ASI sought to tariff this service option separately, there could be no argument that this option, which has no volume or term discount component, would be subject to the requirements of Section 251(c)(4).

Indeed, the “single line” provision within ASI’s tariff is remarkably similar to the Verizon retail tariff that offers single lines of DSL service to end user customers on a monthly basis, and includes a 128k downstream service at an undiscounted rate of \$39.95. The only difference is that Verizon’s tariff also expressly provides that the month-to-month DSL services are also “subject to any appropriate wholesale discount established in the relevant state pursuant to 47 U.S.C. § 251(c)(4).” Verizon Advanced Data Inc., Tariff FCC No. 1, 1st Revised Page 614. Thus, by including its single-line service within the DSL transport tariff, SWBT-ASI is attempting to use the pretense of the bulk/volume discount exception provided in the Second Advanced Service Order for sales to ISPs to evade its checklist obligations with respect to resale of its advanced services. This gamesmanship, coupled with the potential for additional anticompetitive harms associated with SBC’s proposed total ownership of Prodigy (*see* AT&T Reply at 23-24), are wholly contrary to the Commission’s desire to stimulate the development and deployment of advanced services to the residential market.⁸

⁷ *See* SWBT-ASI Tariff, § 6.6. In April, SBC advised an AT&T employee that the monthly rate for DSL service -- a rate that did not include independent ISP charges -- would be \$39 if he entered into a year-long commitment. *See, In the Matter of Application by SBC Communications, Inc., et al., for Provision of In-Region InterLATA Services in Missouri, CC 01-88*, Declaration of Scott Finney on behalf of AT&T, Attachment 3 (Declaration of Nathan Garroway), ¶ 6 (filed Apr. 24, 2001).

⁸ In addition, any argument that there might be no additional avoided costs with respect to SWBT-ASI’s offering is specious. Incredibly, SBC has indicated that it has not prepared a cost study in support of the rates set forth in the ASI-SWBT tariff because “it does not have the expertise or resources needed to prepare a cost study in support of its rates.” *Texas Internet Service Providers Association Petition for Investigation, Suspension and Rejection of SBC-ASI Tariff F.C.C. No.1, and Petition for Reconsideration and Application for Review of Special Permission No. 01-195*, SBC Opposition at 6-7 (filed Sept. 24, 2001).

Accordingly, for the reasons set forth herein, the Commission should find that SWBT is in violation of Checklist item 14 because it does not provide DSL to CLECs as a stand-alone service at a wholesale discount consistent with the requirements of Section 251(c)(4).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "F. J. Simone". The signature is fluid and cursive, with the first name "F. J." and the last name "Simone" clearly distinguishable.

cc: D. Attwood
S. Bergmann
M. Carey
J. Carlisle
H. Thaggert